

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DOCKET & FILE

----- X

UNITED STATES OF AMERICA,

Plaintiff,

-against-

IRVING GELLERSTEIN,
NORMA GELLERSTEIN, and
IRENE GREENFEDER,

Defendants.

MEMORANDUM AND ORDER

08-CV-2702 (KAM) (JO)

----- X

MATSUMOTO, United States District Judge:

Plaintiff United States of America (the "government") brought an action seeking monetary judgment, pursuant to the provisions of 26 U.S.C. § 6672, based on the alleged failure of defendants Irving Gellerstein, Norma Gellerstein, and Irene Greenfeder (collectively, "defendants") to pay federal tax liabilities. (ECF No. 1, Compl.) Presently before the court is the government's motion for default judgment pursuant to Federal Rule of Civil Procedure 55(b)(1) and Rule 55.2(a) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York. (ECF No. 11, Mot. for Default J. at 1; *see also* ECF No. 15, Revised Affidavit of Debt dated 3/16/2011 ("Rev'd Aff.").)

BACKGROUND

The Government filed its Complaint on July 7, 2008, and served process on defendants Norma and Irving Gellerstein on July 29, 2008, and on defendant Irene Greenfeder on August 7, 2008. (ECF No. 2, Executed Summons as to Norma Gellerstein; ECF No. 3, Executed Summons as to Irving Gellerstein; ECF No. 4, Executed Summons as to Irene Greenfeder.) The defendants never responded to the Complaint.

On January 27, 2009, the government moved for a notation of default as to all defendants, (ECF No. 6, Mot. for Entry of Default J.), and on April 29, 2009, the Clerk noted the defendants' defaults. (ECF No. 7, Entry of Default as to Norma Gellerstein; ECF No. 8, Entry of Default as to Irving Gellerstein; ECF No. 9, Entry of Default as to Irene Greenfeder (together, "Entries of Default").) On June 10, 2010, the government moved for default judgment pursuant to Federal Rule of Civil Procedure 55(b)(1) and Rule 55.2(a) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York. (Mot. for Default J. at 1.) Further, and pursuant to this court's order, on March 16, 2011 the government submitted a revised IRS Affidavit of Debt reflecting with respect to each defendant the amounts due and owing to the United States, inclusive of accrued interest

computed from dates of assessment through March 15, 2011. (See Rev'd Aff.)

DISCUSSION

Federal Rule of Civil Procedure 55(b)(1) provides, in relevant part, that "[i]f the plaintiff's claim is for a sum certain . . . the clerk - on the plaintiff's request, with an affidavit showing the amount due - must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person." Fed. R. Civ. P. 55(b)(1). Each of these conditions has been met in this case. See *D'Orange v. Feely*, 101 F.3d 1393 (2d Cir. 1996), reported at No. 95-7904 1996 U.S. App. LEXIS 20495, at *11 (2d Cir. 1996 Aug. 8, 1996), cert. denied 522 U.S. 919 (1997) (noting that default judgment for a sum certain may be entered by the clerk when "(1) the plaintiff's claim against the defendant is for a sum certain; (2) the plaintiff has submitted an affidavit of the amount due; and (3) the defendant has defaulted for failure to appear") (citing Fed. R. Civ. P. 55(b)(1)).

First, the government's sole request for relief seeks a sum certain. (See Mot. for Default J.) Specifically, according to the Revised Affidavit of Debt provided by the IRS

on March 16, 2011, the government seeks: from Irving Gellerstein, \$25,410.37, inclusive of accrued interest computed from the dates of assessments through March 15, 2011; from Norma Gellerstein, \$284,565.73, inclusive of accrued interest computed from the dates of assessments through March 15, 2011; and from Irene Greenfeder, \$284,248.71, inclusive of accrued interest computed from the dates of assessments through March 15, 2011. (See Rev'd Aff.) Second, in support of its request for the sum certain, the government has submitted an affidavit showing the amount due. (See *id.*) Third, the defendants, whom the government has affirmed are neither infants, incompetent persons, nor active military service members protected from default judgment, have defaulted by not appearing. (See Mot. for Default J. at 2; see also Entries of Default.) Under such circumstances, the Clerk "must enter judgment" as requested. Fed. R. Civ. P. 55(b)(1); see also *D'Orange*, 1996 U.S. App. LEXIS 20495, at *11.

CONCLUSION

For the foregoing reasons, the Clerk of the Court is respectfully requested to enter judgment against Irving Gellerstein in the amount of \$25,410.37, against Norma Gellerstein in the amount of \$284,565.73, and against Irene

Greenfeder in the amount of \$284,248.71, and to close this case. The Government is directed to serve a copy of this Memorandum and Order on defendants and to file a declaration of service no later than March 18, 2011.

SO ORDERED.

Dated: March 16, 2011
Brooklyn, New York

_____/s/
Kiyoko A. Matsumoto
United States District Judge